

CAMBODIA

by the International Coalition of Sites of Conscience (as of April 2018)

Summary of Reparations Efforts and Programs

Cambodia has implemented reparations to address the genocide of the Cambodian people by the Khmer Rouge (1975–1979). The Extraordinary Chambers in the Courts of Cambodia (ECCC), a hybrid criminal court, is the only state-supported transitional justice process. After a guilty verdict, it can only award reparations that are symbolic and collective. Cambodian victims do not have access to individual reparations.

Context

From April 17, 1975 to January 7, 1979, the Khmer Rouge committed a genocide against the Cambodian population. During its four-year rule, the Khmer Rouge subjected Cambodians to various human rights violations, including mass executions, torture, sexual and gender-based violence, detention without trial, and forced labor, causing the deaths of 1.4 to 2.2 million people.

In 1997, the government requested assistance from the United Nations (UN) to establish a court dedicated to prosecuting the senior leaders of the Khmer Rouge.¹ This court, the ECCC, began operating in 2006.² It is a hybrid court that employs both Cambodian and international judges and lawyers who apply both Cambodian and international law.³ The ECCC is mandated to prosecute senior leaders of the Khmer Rouge and those most responsible for serious violations of international and domestic law that occurred between April 17, 1975 and January 6, 1979 as well as to grant reparations to victims.⁴ As of April 2018, the court has convicted and sentenced three defendants to life imprisonment; trials against four more are ongoing.⁵

On the surface, Cambodia has all the trappings of a free and democratic society and has domesticated various international laws and standards. However, corruption, lack of transparency, and impunity for government abuses have undercut such positive developments and affected the enjoyment of rights in practice. For 2017, Transparency International ranked Cambodia 161st out of 167 countries based on perceived levels of public sector corruption.⁶ Consequently, some fear that corruption and political interference will seep into ECCC trials, which has impacted the ECCC's ability to maintain an image of fair trials. For example, in Cases 003 and 004, Prime Minister Hun Sen as well as Cambodian judges and Cambodian prosecutors at the ECCC have repeatedly refused to cooperate in prosecuting additional suspects, especially members of the government who were previously in the Khmer Rouge.⁷ This in turn has reduced the number of opportunities for court-ordered reparations, which follow convictions.

Sources of Reparations

Over 65% of the Cambodian population was born after the genocide, and many young Cambodians do not believe such atrocities took place.⁸ Cambodia does not have a comprehensive transitional justice policy to address the past and keep alive the history of the Khmer Rouge. The state-led transitional justice process only involves the ECCC trials, which have been slow and criticized by the public. In fact, only two cases have concluded, causing Cambodians to view the trials as more of a symbolic process than a successful criminal accountability mechanism. Positively, the ECCC has held fair and public trials, made well-reasoned judicial decisions, and provided opportunities for victim participation.

The ECCC appears to have been more successful in delivering reparations than criminal accountability. Victims who participate in trials as Civil Parties may seek “collective and moral reparations” from the court.⁹ In addition, reparations may be obtained through the development of a Non-Judicial Measure by the Victims Support Section (VSS) of the ECCC.¹⁰ The ECCC only awards collective reparations because the large number of victims has rendered individual reparations, such as restitution or compensation, extremely difficult.¹¹ The trial chamber may not make recommendations on reparations to the government. Since 2010, the ECCC has allowed external donors to fund court-awarded reparations.¹²

In Case 001, against Kaing Guek Eav (alias “Duch”), who was convicted and sentenced to life imprisonment for crimes against humanity, the court granted only 2 of the 28 reparations requests. It rejected the other 26 reparations requests, including for education programs, medical and psychosocial support for victims, and the construction of pagodas, on account of their insufficient collective or moral nature, their imprecision, or the ECCC’s lack of jurisdiction over the government regarding reparations.¹³ However, the ECCC took a different approach in considering similar requests in Case 002. Case 002, against Nuon Chea and Khieu Samphan—which was severed into Case 002/01 (for crimes against humanity of forced population movement and executions) and Case 002/02 (for genocide, forced marriage and rape, and other crimes against humanity)—yielded 36 reparations requests.¹⁴ In Case 002/01, which resulted in the defendants’ conviction and life sentences, the ECCC recognized 11 of 13 requests as reparations.¹⁵ It rejected two requests due to insufficient proof of funding for those projects.¹⁶ In Case 002/02, which is expected to be decided in 2018, the Civil Parties requested 23 reparations projects, including on rehabilitation, documentation, memorialization, and education.¹⁷ Unless Nuon Chea and Khieu Samphan are convicted of the charges in Case 002/02, the ECCC cannot make decisions about the reparations requests in that case.

Reparations Efforts and Programs

The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by the UN General Assembly in 2005, directs states to provide victims with five forms of reparations: restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.¹⁸

1. Restitution

Restitution aims to restore the victim to their situation before they had been violated. For example, enabling a victim's return to their place of residence, returning property, and restoring citizenship are acts of restitution. The ECCC did not award restitution measures because the large number of victims has rendered individual reparations extremely difficult.

2. Compensation

When damage is economically assessable, states should provide compensation. The ECCC did not award compensation measures because the large number of victims has rendered individual reparations extremely difficult.

3. Rehabilitation

Rehabilitation involves redressing victims through, for instance, the provision of medical, psychosocial, and legal services.

Medical and psychological care

The Transcultural Psychosocial Organization (TPO) Cambodia, the leading non-governmental organization for mental healthcare and psychosocial support in the country, has worked closely with the ECCC on rehabilitation measures. In 2016, TPO Cambodia launched a three-year project, "Healing and Reconciliation for Victims of Torture of Khmer Rouge Trauma," to deliver mental and psychosocial support to individuals and communities affected by the Khmer Rouge.¹⁹ The ECCC recognized the "Testimonial Therapy" project, in which a mental health professional assists the Civil Parties in creating written testimony to share at a public memorial ceremony, and the "Self-Help Groups for Rehabilitation" project, which will establish professionally facilitated self-help groups as reparations attached to Case 002/01. TPO Cambodia is the implementer for both.²⁰

The Civil Parties in Case 002/02 proposed two projects for which TPO Cambodia is an implementer: the "Promoting Healing and Reconciliation in Cambodia Through Psychosocial Interventions" project, to promote mental health, truth-telling, and memorialization in rural

areas, and the “Phka Sla Kraom Angkar: Forced Marriages Under the Khmer Rouge Regime” project, to address gender inequality and gender-based violence through various mediums.²¹ The VSS also developed a Non-Judicial Measure on gender and transitional justice that has funded UN Women’s transitional justice work, which has entailed facilitating dialogue among victims of forced marriage under the Khmer Rouge.²²

4. Satisfaction

Satisfaction includes a wide range of measures, such as ceasefires, truth-seeking and documentation,²³ the search for missing or disappeared persons, and memorialization. Because the ECCC cannot support individual, material reparations due to the large number of victims, it has addressed a range of symbolic measures that constitute satisfaction.

Verification of the facts and full and public disclosure of the truth

In Case 002/01, the ECCC recognized a project to provide Civil Parties with both a full and summary version of the trial judgment to distribute to Civil Parties, their families, and the general public. Meanwhile, the VSS developed a Non-Judicial Measure to create an ECCC Documentation Center, hosting an archive of ECCC documents and work stations for individuals to study and analyze such papers.²⁴ Another Non-Judicial Measure resulted in the ECCC Virtual Tribunal, which contains a wealth of information, including background on the Khmer Rouge and the ECCC, court documents and videos, media coverage of judicial proceedings, and educational tools for teachers and students.²⁵

The Civil Parties proposed the “Preservation of Crime Sites” project in their request for reparations in Case 002/02. Through this project, the VSS would give resources for the sustainable documentation, preservation, and protection of the evidence of crimes identified in the case. It would likely involve constructing community management plans and resources for visitors to the sites. Since the ECCC has yet to decide Case 002/02, it remains to be seen if the ECCC will grant this reparations request.

Official declaration or a judicial decision restoring victims’ dignity, reputation, and rights

The ECCC published the names of the Civil Parties in Case 001 and Case 002/01 to acknowledge their harms suffered.

Public apology

The ECCC awarded a reparations project attached to Case 001 to compile and publish Duch’s apologies. Apologies and statements admitting legal responsibility for crimes made by Duch

during his judicial proceedings are available on the ECCC's website.²⁶ Unfortunately, the Civil Parties felt that Duch's apologies were insincere and were made in an attempt to get leniency from the ECCC. In Case 002/01, Nuon Chea and Khieu Samphan partially apologized but denied legal responsibility for their crimes.²⁷

Judicial and administrative sanctions against persons liable for the violations

As of April 2018, the ECCC has convicted and sentenced three defendants—Duch, Nuon Chea, and Khieu Samphan—to life imprisonment.²⁸ However, due to the passage of nearly 40 years since the fall of the Khmer Rouge, the advanced ages of surviving senior leaders, and the slow pace of ECCC trials, it appears unlikely that the ECCC will issue many more judicial sanctions.

Commemorations and tributes to the victims

Attached to Case 002/01, the ECCC recognized several projects to commemorate victims and memorialize their experiences, ranging from printed materials to physical memorials.²⁹

The government established an annual National Day of Remembrance on May 20, which was previously known as the Day of Anger (toward the Khmer Rouge).³⁰ The VSS developed a Non-Judicial Measure for the government to hold a national reconciliation event involving Civil Parties, victims, government officials, and religious representatives.³¹ In 2014, a civil society organization created the Community Peace Learning Center in Samrong Khnong, the site of mass killings, transforming it into a place for intergenerational dialogue and peace education.³²

The ECCC recognized two projects on memorializing in Phnom Penh. As part of the “For Those Who Are No Longer Here” memorial initiative, a sculpture was unveiled outside the French embassy in Phnom Penh as homage to victims of forced displacement by the Khmer Rouge. The sculpture stood outside the embassy for one month before the government moved it inside the Tuol Sleng Genocide Museum without giving notice or explanation to the Civil Parties. The ease with which the government altered ECCC-ordered reparations has undermined victims' perception of the ECCC as an effective transitional justice mechanism.³³ The VSS developed the “Tuol Sleng Stupa Project,” a Non-Judicial Measure to build a stupa at Tuol Sleng, a Khmer Rouge interrogation, torture, and execution site.³⁴ The stupa was revealed in March 2015 with the inclusion of the names of the 12,272 victims of Tuol Sleng.³⁵

Permanent and mobile exhibitions on forced population movement and Tuol Po Chrey, a mass execution site, were recognized as reparations projects in Case 002/01, and they perform commemorative and educational functions. The Ministry of Culture and Fine Arts and a civil society organization have partnered to construct permanent exhibitions in Battambang, Banteay

Meanchey, Kampong Thom, Takeo, and Svay Rieng Provinces. The creation of a separate mobile exhibition on forced population movement and Tuol Po Chrey is also underway.

In addition to physical monuments and museum exhibitions, the ECCC recognized the “Illustrated Civil Party Storybook” project, which tells the Civil Parties’ stories with illustrations. It will be published as the second edition of the Cambodian Human Rights Action Committee’s book of Civil Party stories.

Inclusion of an accurate account of the violations in training and educational materials

Only one of the projects proposed in Case 002/01 targeted education reform. This project sought to add a chapter on forced population movement and executions at Tuol Po Chrey to the Cambodian school curriculum by updating a teacher’s manual.³⁶ The updated teacher’s manual was distributed after the ECCC delivered its judgment in Case 002/01.³⁷

5. Guarantees of non-repetition

Guarantees of non-repetition center on institutional reform, such as vetting and lustration processes.

Effective civilian control of military and security forces

Cambodians have felt betrayed by the security forces, which assisted the Khmer Rouge in the genocide, and they have remained concerned about the independence and impartiality of the security forces. While the Law on Political Parties states that members of the security forces must act with political neutrality—neither in favor nor against any political party—security force commanders have continued to be political party officials. In February 2015, the Cambodian People’s Party (CPP) tried to increase its control over the security forces by adding at least 80 commanders and other security officials to the CPP’s Central Committee.³⁸ The security forces’ close ties to the CPP, coupled with corruption, have allowed members and commanders of security forces who belong to the CPP to enjoy impunity for human rights violations, including political assassinations, other extrajudicial killings, and torture.³⁹ For example, no one was held accountable for the range of violations by security forces during the violent crackdown on protests from 2013 through 2014, in which their excessive use of force killed at least six people.⁴⁰

To ensure the torture and other cruel, inhuman, or degrading treatment that occurred in Khmer Rouge prisons does not repeat, the government now has mechanisms to monitor prisons, their conditions, and their infrastructure in order to respect the human rights of detainees.⁴¹

Due process, fairness, and impartiality in civilian and military proceedings

As of 2013, Cambodia has 416 laws to promote, improve, and strengthen the legal and institutional frameworks of various fields, including the capacity, independence, and neutrality of the judiciary and other related legal and institutional frameworks.⁴² Regarding broad legal and judicial reform, the government developed the Legal and Judicial Reform Strategy to promote the rights enshrined in the Constitution,⁴³ prioritizing sectors affecting poor and otherwise vulnerable people. Meanwhile, the public continues to distrust the justice system.⁴⁴

Independence of the judiciary

Article 128 of the Constitution requires an independent and impartial judiciary.⁴⁵ The judges at the hybrid ECCC have also strived to be independent and impartial in order to fulfill their duties free from the influences of the government, civil society organizations, international organizations, or the media. However, civil society organizations have found the persistence of widespread corruption. In fact, as of 2016, Cambodians have perceived the judiciary as the most corrupt state institution.⁴⁶ To combat corruption, the government has implemented ongoing trainings for judges on professional ethics and discipline.⁴⁷

Human rights education and training for law enforcement officials and security forces

In late 2015, the Office of the UN High Commissioner for Human Rights (OHCHR) conducted a training, with follow up, for provincial prosecutors, police officers, and gendarmerie officers on the prevention, investigation, and prosecution of torture and ill-treatment at the district level. Further trainings were planned for 2016.⁴⁸ OHCHR held a similar training for lawyers at the ECCC. In March and April 2016, OHCHR delivered the first compulsory human rights course for trainee lawyers to ensure they possessed the necessary knowledge to defend their clients' rights to a fair trial.⁴⁹

Mechanisms for preventing and monitoring social conflicts and their resolution

In September 2006, in collaboration with Association of Southeast Asian Nations (ASEAN), the government, represented by the Cambodian Human Rights Committee (CHRC), organized a National Conference on the Establishment of a National Human Rights Institution based on the Paris Principles.⁵⁰ This conference resulted in two committees: the Human Rights Protection and Complaints Handling Committees and the Human Rights Committee. The Human Rights Protection and Complaints Handling Committees are in both the National Assembly and the Senate. They receive, address, and resolve petitions and requests from the people making complaints about rights violations.⁵¹ The Human Rights Committee is mandated to investigate cases, collect information about the enforcement of human rights, and prepare a report for the

relevant UN bodies. It is also responsible for developing policies and improving the implementation of human rights.⁵² While these national human rights bodies have the potential to promote and protect human rights, they have not demonstrated sufficient autonomy to hold the government accountable for its human rights record.

Furthermore, OHCHR organized three specialized training sessions on human rights monitoring and fact-finding for civil society organizations, focusing on local and grassroots activists, including 49 monks from Battambang Province, 34 members of trade unions and farmer associations in Prey Veng and Svay Rieng Provinces, and 35 human rights defenders from Kampot, Koh Kong, and Preah Sihanouk Provinces, including 10 women. OHCHR noted that participants thought the training—particularly on the importance of verification of facts, analysis, and systematic documentation—was relevant to their daily work.⁵³

Review and reform of laws contributing to human rights violations

Cambodia has undergone several institutional reforms since the fall of the Khmer Rouge, such as constitutional reform processes to relegate control of power to an elected parliament and legislature. In addition to constitutional reform, the current government has passed laws to combat corruption, enshrine civil and political rights, create an independent judiciary, and strengthen the rule of law. However, the laws often do not translate from paper to practice.⁵⁴

¹ “Introduction to the ECCC,” Extraordinary Chambers in the Courts of Cambodia (ECCC), accessed April 14, 2018, <https://www.eccc.gov.kh/en/introduction-eccc>.

² “Key Events,” ECCC, accessed April 15, 2018, <https://www.eccc.gov.kh/en/keyevents>.

³ “Is the ECCC a Cambodian or an International Court?,” ECCC, July 20, 2017, <https://www.eccc.gov.kh/en/faq/eccc-cambodian-or-international-court>.

⁴ “Introduction to the ECCC.”

⁵ “Case 001,” ECCC, accessed April 15, 2018, <https://www.eccc.gov.kh/en/case/topic/90>; “Case 002,” ECCC, accessed April 15, 2018, <https://www.eccc.gov.kh/en/case/topic/119>; “Case 003,” ECCC, accessed April 15, 2018, <https://www.eccc.gov.kh/en/case/topic/287>; “Case 004,” ECCC, accessed April 15, 2018, <https://www.eccc.gov.kh/en/case/topic/120>.

⁶ “Corruption Perceptions Index 2017,” Transparency International, https://www.transparency.org/news/feature/corruption_perceptions_index_2017.

⁷ Human Rights Watch (HRW), “Cambodia: Stop Blocking Justice for Khmer Rouge Crimes,” March 22, 2015, <https://www.hrw.org/news/2015/03/22/cambodia-stop-blocking-justice-khmer-rouge-crimes>.

⁸ Open Society Justice Initiative, *Performance and Perception: The Impact of the Extraordinary Chambers in the Courts of Cambodia* (New York: Open Society Foundations, 2016), 12, 16, <https://www.opensocietyfoundations.org/sites/default/files/performance-perception-eccc-20160211.pdf>.

⁹ “Victims Support Section,” ECCC, accessed April 15, 2018, <https://www.eccc.gov.kh/en/organs/victims-support-section>.

¹⁰ Victims Support Section (VSS) and Civil Party Lead Co-Lawyers (LCLs) of the ECCC, 6.

¹¹ “Moral and Collective Reparation,” ECCC, accessed May 2, 2018, <https://www.eccc.gov.kh/en/topic/902>.

¹² Lauren Crothers, “Most ECCC Reparations Projects Secure Funding,” *Cambodia Daily*, April 22, 2014, <https://www.cambodiadaily.com/news/most-eccc-reparations-projects-secure-funding-56910/>.

¹³ Access to Justice Asia and University of California–Berkeley Law, “Victims’ Right to Remedy: Awarding Meaningful Reparations at the ECCC,” November 18, 2011, https://www.law.berkeley.edu/wp-content/uploads/2015/04/Press-Release_Victims-Right-to-Remedy-18-Nov-11.pdf.

- ¹⁴ “Case 002.” ECCC, accessed April 15, 2018, <https://www.eccc.gov.kh/en/case/topic/119>.
- ¹⁵ Civil Party Lead Co-Lawyers’ Section, *Attachment: Overview of Civil Party Reparation Requests in Case 002/01* (Phnom Penh: ECCC, 2014), <https://www.eccc.gov.kh/sites/default/files/articles/Annex%20Case%20002-01%20ReparationProjects.pdf>; “Results of Forum on Developments of ECCC’s Proceedings and Reparations in Case 002/02,” ECCC, accessed April 15, 2018, <https://www.eccc.gov.kh/en/node/37786>.
- ¹⁶ “Victims’ Right to Remedy,” Center for Justice and Accountability, accessed April 15, 2018, <https://cja.org/what-we-do/litigation/khmer-rouge-trials/related-resources/victims-right-to-remedy/>.
- ¹⁷ Access to Justice Asia and University of California–Berkeley Law, “Victims’ Right to Remedy: Awarding Meaningful Reparations at the ECCC,” November 18, 2011, https://www.law.berkeley.edu/wp-content/uploads/2015/04/Press-Release_Victims-Right-to-Remedy-18-Nov-11.pdf; VSS, “Wide Ranging Support for Reparation,” March 16, 2017, https://kh.boell.org/sites/default/files/uploads/2017/03/vss_press_release_16_march_2017.pdf.
- ¹⁸ Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, U.N. Doc. A/RES/60/147 (December 16, 2005), available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>.
- ¹⁹ “Healing and Reconciliation for Victims of Torture of Khmer Rouge Trauma,” Transcultural Psychosocial Organization (TPO) Cambodia, accessed April 20, 2018, <http://tpocambodia.org/healing-and-reconciliation-for-victims-of-torture-of-khmer-rouge-trauma/>.
- ²⁰ Civil Party Lead Co-Lawyers’ Section.
- ²¹ VSS, “Wide Ranging Support for Reparation,” March 16, 2017, https://kh.boell.org/sites/default/files/uploads/2017/03/vss_press_release_16_march_2017.pdf.
- ²² Victims Support Section (VSS) and Civil Party Lead Co-Lawyers (LCLs) of the ECCC, *ECCC Reparation Program 2013–2017 for the Victims of the Khmer Rouge Regime 1975–1979* (Phnom Penh: ECCC, 2013), 11, <http://vss.eccc.gov.kh/images/stories/2014/Reparation.pdf>; “Rule of Law and Justice,” UN Women Asia and the Pacific, accessed April 20, 2018, <http://asiapacific.unwomen.org/en/focus-areas/peace-and-security/rule-of-law-and-justice>.
- ²³ Documentation involves the verification of the facts, which contributes to an accurate account of violations and the disclosure of the truth.
- ²⁴ ECCC, *Proposed Budget for 2012–2013* (Phnom Penh: ECCC, 2012), 65–66, <https://www.eccc.gov.kh/sites/default/files/ECCC%20Budget%202012-2013.pdf>.
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- ²⁸ “Case 001”; “Case 002”; “Case 003”; “Case 004.”
- ²⁹ Civil Party Lead Co-Lawyers’ Section.
- ³⁰ Kuoch Masy, “‘Day of Anger’ Becomes Kingdom’s Latest National Holiday,” *Phnom Penh Post*, February 20, 2018, <https://www.phnompenhpost.com/national/day-anger-becomes-kingdoms-latest-national-holiday>.
- ³¹ Victims Support Section (VSS) and Civil Party Lead Co-Lawyers (LCLs) of the ECCC, 11.
- ³² “Samroung Knong Community Peace Learning Center,” Youth for Peace, accessed April 15, 2018, <http://www.yfpcambodia.org/index.php?p=activity-detail.php&activityId=59&menuf=1>.
- ³³ Erin Handley, “Khmer Rouge reparations Statue Quietly Removed,” *Phnom Penh Post*, January 29, 2018, <https://www.phnompenhpost.com/national/khmer-rouge-reparations-statue-quietly-removed>.
- ³⁴ Victims Support Section (VSS) and Civil Party Lead Co-Lawyers (LCLs) of the ECCC, 10.
- ³⁵ Marina Shafik, “Tuol Sleng Memorial Unveiled,” *Khmer Times*, March 26, 2015, <https://www.khmertimeskh.com/news/9988/tuol-sleng-memorial-unveiled/>.
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- ⁴² *National Report for UPR*, ¶ 28.
- ⁴³ *National Report for UPR*, ¶ 31.
- ⁴⁴ *National Report for UPR*, ¶ 95.
- ⁴⁵ CONSTITUTION, art. 128 (1993) (as amended in 1999).
- ⁴⁶ UN Secretary-General, *Role and Achievements of the Office of the United Nations High Commissioner for Human Rights in Assisting the Government and People of Cambodia in the Promotion and Protection of Human Rights*, ¶ 16, U.N. Doc. A/HRC/33/39 (Advance Edited Version); Human Rights Council, 33rd Sess. (August 26, 2016), available at http://cambodia.ohchr.org/sites/default/files/Ohchr-report/A_HRC_33_39_en.pdf.
- ⁴⁷ Parliamentary Institute of Cambodia, *Legal and Judicial Reform in Cambodia* (Phnom Penh: Parliamentary Institute of Cambodia, 2016), 9, https://www.pic.org.kh/images/2016Research/20170505_Legal_Judicial_Reform_Eng.pdf.
- ⁴⁸ UN Secretary-General, ¶ 39.
- ⁴⁹ UN Secretary-General, ¶ 40.
- ⁵⁰ *National Report for UPR*, ¶ 9.
- ⁵¹ *National Report for UPR*, ¶ 38a.
- ⁵² *National Report for UPR*, ¶ 38b.
- ⁵³ UN Secretary-General, ¶ 25.
- ⁵⁴ *National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21*: Cambodia*, ¶ 59.